No. 90-97

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1990

AMERICAN HOSPITAL ASSOCIATION,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, et al.

Respondents

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit

AMICUS CURIAE BRIEF OF THE FAIRFAX HOSPITAL SYSTEM IN SUPPORT OF THE PETITION

JOHN G. KRUCHKO*
PAUL M. LUSKY
KRUCHKO & FRIES
Suite 202
7929 Westpark Drive
McLean, Virginia 22102
(703) 734-0554

Attorneys for Amicus Curiae
The Fairfax Hospital System

* Counsel of Record

Balmar Legal Publishing Division, Washington, DC 20005 (202) 659-3610

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INTEREST OF THE AMICUS CURIAE

The Fairfax Hospital System submits its brief as *amicus curiae* in support of the petition for writ of certiorari of the American Hospital Association.[1] Petitioner in this matter challenges the legitimacy under applicable law of the National Labor Relations Board's Final Rule for Collective-Bargaining Units in the Health Care Industry (hereinafter "Final Rule" or "the Rule"). 54 Fed. Reg. 16347-16348, 29 C.F.R. § 103.30 (1989). The Fairfax Hospital System believes it can illuminate the disruption and associated costs that will occur if the Seventh Circuit's decision vacating the injunction against the Rule is allowed to stand. The *amicus curiae* brief will demonstrate the practical impact of the Board's Final Rule on acute care hospitals throughout this country.

[1] All parties to this proceeding have given their written consent for the filing of this *amicus curiae* brief. The consent letters are set forth in the Appendix to this brief. (App., *infra*, 1a-4a).

The Fairfax Hospital System consists of four affiliated nonprofit hospitals located in the Washington, D. C. suburbs of Northern Virginia. The hospitals include: (1) Fairfax Hospital, located in Falls Church, Virginia; (2) Fair Oaks Hospital, located in Fairfax, Virginia; (3) Jefferson Hospital, located in Alexandria, Virginia and (4) Mount Vernon Hospital, also located in Alexandria, Virginia. The Fairfax Hospital System employs over 7,000 health care workers. The largest of the hospitals in the System is Fairfax Hospital with over 4,500 employees. Mount Vernon Hospital has approximately 1,200 employees, whereas Fair Oaks Hospital has over 850 employees. Jefferson Hospital is the smallest of the hospitals within the Fairfax Hospital System and it employs approximately 420 individuals. The four hospitals, despite a great disparity in size and complexity of organization, all come within the definition of "acute care" hospital as set forth in the Board's Final Rule.

All employees of the Fairfax Hospital System are currently nonunion. On January 17, 1990, however, a petition was filed in Region 5 of the National Labor Relations Board ("NLRB") by the District of Columbia Nurses Association ("DCNA"). By this petition, designated Case No. 5-RC-13331 by the NLRB, the DCNA seeks to represent a unit of approximately 1,200 registered nurses within Fairfax Hospital. The Regional Director for Region 5 has been prevented from taking any action on the petition because of the injunction issued by the United States District Court for the Northern District of Illinois on July 25, 1989. The United States Court of Appeals for the Seventh Circuit vacated the injunction against enforcement of the Board's Final Rule on April 11, 1990. The American Hospital Association gained a stay of that order pending the petition to the United States Supreme Court for a writ of certiorari.

If the writ of certiorari is not granted, however, it is expected that Region 5 will move quickly to apply the Board's Final Rule to the petition filed by the DCNA and certify the proposed unit of registered nurses as an appropriate bargaining unit without considering the special facts of employment at Fairfax Hospital. Without review by the Supreme Court, Fairfax Hospital will be precluded from exploring the appropriateness of alternative bargaining units at Fairfax Hospital during the representation proceeding. The Seventh Circuit's decision to dissolve the injunction against the Board's Final Rule also raises

the specter of 32 possible units within the Fairfax Hospital System, the potential for jurisdictional disputes between unions competing for membership within the System, and the potential for dramatic increases in administrative costs for the Fairfax Hospital System as a consequence of having to negotiate and administer contracts with many different unions within the Fairfax Hospital System.

The potential fragmentation of its work force is particularly alarming to Fairfax Hospital because it operates a highly integrated work force with a great degree of contact between registered nurses and other allied professionals. The Hospital utilizes a team approach to health care. The Hospital is organized along service department lines rather than artificially according to the various professions working within the facility. The Hospital's registered nurses work side-by-side with emergency room physicians, respiratory therapists, physical therapists, dieticians, occupational therapists, pharmacists, social workers, respiratory technicians, registered medical technologists and x-ray technicians. Many of these allied professionals have common management and supervisory personnel. They have similar education, training and licensing requirements. Their salaries are comparable and they participate in common benefit plans of the Fairfax Hospital System.

The Fairfax Hospital System believes the determination of an appropriate bargaining unit for any group of organized employees at Fairfax Hospital must take into consideration the integrated nature of the Hospital's staff. Applicable decisions of the Fourth Circuit have favored a case-by-case approach to bargaining unit determinations by the NLRB and due consideration of the congressional admonition against proliferation of bargaining units in the health care industry. *See NLRB v. Frederick Memorial Hospital*, 691 F.2d 191 (4th Cir. 1982). Application of the Board's Final Rule to the DCNA petition will preclude any litigation of the appropriateness of an alternative bargaining unit at the administrative level. In order to obtain consideration of the special nature of employment at Fairfax Hospital, the Hospital would be forced to challenge the appropriateness of the unit before the Fourth Circuit. Thus, unless the issue of the legitimacy of the Board's Final Rule is resolved now by the Court, Fairfax Hospital System faces the possibility of extended litigation over the application of the Rule to one or more of its hospitals.

The Fairfax Hospital System is, thus, vitally interested in the issues presented by this case and it supports a resolution of these issues at this time so that Fairfax Hospital and the Fairfax Hospital System can accurately weigh their legal and administrative options in response to the current organizing petition and the other potential petitions within the Fairfax Hospital System.

STATEMENT

As set forth in detail by the American Hospital Association in the Petition for a Writ of Certiorari, this case presents the important issue of whether the NLRB will be allowed to promulgate and apply a rule mandating that only eight bargaining units are appropriate within acute care hospitals regardless of their size, location or differences in their operations. *See* Petition for a Writ of Certiorari; (hereinafter "Pet."), pp.2-3. The Board's Final Rule for Collective-Bargaining Units in the Health Care Industry, and its *per se* application to all representation petitions relating to acute care hospitals, including the petition for representation of registered nurses at Fairfax Hospital, raises substantial and difficult legal questions requiring this Court's review. Specifically, is the Final Rule contrary to the congressional admonition contained in the legislative history of the Health Care Amendments Act of 1974? Is it in conflict with Section 9(b) of the National Labor Relations Act which requires the Board to decide appropriate bargaining units "in each case"? 29 U.S.C. § 159(b).

The Board's Final Rule provides for eight bargaining units within acute care hospitals. This is true regardless of the size or complexity of operations of any particular hospital. The Rule makes clear that the eight appropriate units set forth in the Rule are the only appropriate units for bargaining "except in extraordinary circumstances". The eight units mandated by the Rule include: (1) all registered nurses; (2) all physicians; (3) all professionals except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; and (8) all [other] nonprofessional employees...." 54 Fed. Reg. 16347-16348, 29 C.F.R. § 103.30; *see also* Appendix to the Petition for Writ of Certiorari (hereinafter "Pet. App."), p.44a.

The Board's "extraordinary circumstances" exception is extremely narrow. The Board has stated that it will not consider additional evidence or arguments that a particular hospital varied from the norm, even if the variation is "highly unusual". *See* Second Notice of Proposed Rule Making ("NPR II"), 53 Fed. Reg. 33932-33933 (1988); Pet., p.9. Hospitals bear a "heavy burden" to demonstrate that extraordinary circumstances exist which make the *per se* Rule inappropriate. *Id.* at 33933. In particular, the Board has stated that "increased functional integration of and a higher degree of work contacts between, employees as a result of the advent of a multi-competent worker, increased use of 'team' care and cross training of employees" would not be considered as a possible extraordinary circumstance. *Id.* at 33932. Differences in the sizes of various acute care hospitals, the variety of services offered by each institution and differences in staffing patterns among such facilities will also not be given weight as extraordinary circumstances meriting relief from the Rule. *Id.*

Petitioner in this case, American Hospital Association, challenged the Final Rule in the United States District Court for the Northern District of Illinois. On July 25, 1989, the district court issued a permanent injunction barring its enforcement. *American Hospital Ass'n v. NLRB*, 718 F. Supp. 704 (N.D. Ill. 1989). The district court held that the Board's Final Rule was in conflict with the congressional admonition to give due consideration to undue proliferation of bargaining units in the health care industry. The court said:

> A rule which designates an absolute number of appropriate units and mandates a particular division of the workforce, especially in the health care field where employees' work environment varies widely, is not responsive to Congress' express concern. In fact, as noted above, such a rule encourages, and perhaps coerces, fragmentation of the labor force within particular health care facilities.

Pet. App. at 41a-42a.

The district court did not decide the question of whether the Board's Final Rule was also precluded by the requirement of Section 9(b) of the Act to determine the appropriate bargaining unit "in each case". 29 U.S.C. § 159(b). Nor did the district court address the

American Hospital Association's claim that the Rule was "arbitrary, capricious and not supported by the evidence." Pet., p.10.

Respondents appealed the district court's decision to the Seventh Circuit Court of Appeals. In *American Hospital Ass'n v. NLRB*, 899 F.2d 651 (7th Cir. 1990), the Seventh Circuit reversed the decision of the district court and vacated the injunction. Pet. App. at 16a. The court of appeals held that the "in each case" requirement of Section 9(b) did not require a case-by-case determination of bargaining units. The court also held that the Rule was not precluded by the congressional admonition against proliferation of units in the health care field. Finally, the court of appeals rejected the American Hospital Association's argument that the Final Rule was arbitrary and capricious because it failed to distinguish between "hospitals of different sizes and missions in different locations". *Id.* at 14a; *see also* Pet., pp.10-11.

In reaching its decision, the Seventh Circuit made no attempt to distinguish decisions of other courts of appeals which have rejected *per se* rules dealing with the appropriateness of a bargaining unit in any particular industry. For example, in *NLRB v. Frederick Memorial Hosp., Inc.*, 691 F.2d 191 (4th Cir. 1982), the Fourth Circuit denied enforcement of a Board order finding a bargaining unit composed of all registered nurses to be appropriate because the Board had considered the appropriateness of the registered nurses unit without addressing the question of unit proliferation. The Fourth Circuit said:

> [T]he Board must give due consideration to the congressional admonition against proliferation. Furthermore, a Board decision must clearly explain "the manner in which its unit determination...implement[s] or reflect[s] that admonition...."

691 F.2d at 194.

On May 2, 1990, the Court of Appeals for the Seventh Circuit granted the American Hospital Association's motion to stay the issuance of the mandate pending the outcome of the petition for a writ of certiorari. Pet., p.11.

REASONS FOR GRANTING THE PETITION

The Seventh Circuit's decision in *American Hospital Ass'n v. NLRB* will have a direct and immediate effect on the Fairfax Hospital System. If the decision is allowed to stand, the Board will no longer be prohibited from applying its Final Rule to representation petitions within the health care industry. The Board will undoubtedly approve the DCNA's petition for an all RN unit at Fairfax Hospital without considering the special facts of employment at Fairfax Hospital. Contrary to the Fourth Circuit's direction in its *Frederick Memorial Hospital* decision, the Board will also not determine whether the application of the Rule would result in an unnecessary proliferation of units within Fairfax Hospital and ultimately within the Fairfax Hospital System. Unless the issue of the legitimacy of the NLRB's Final Rule is resolved at this time, Fairfax Hospital, if it wants the special circumstances of employment at the Hospital to come to light, will be forced to challenge the application of the Rule in litigation before the Fourth Circuit. The cost of any such challenge will work a heavy burden on the Fairfax Hospital System and would be an unnecessary utilization of resources of the court of appeals. Labor relations at the Hospital would be needlessly disrupted while the Fourth Circuit challenge proceeds. A decision by the Court to grant certiorari and resolve the question of the legitimacy of the Board's Final Rule now will avoid this waste of resources and resolve the conflict that exists at this time between the courts of appeals.

Even if Fairfax Hospital does not challenge the Board's Rule before the Fourth Circuit, the application of the Rule to the pending petition of the DCNA forecloses the possibility that a bargaining unit other than an all RN unit will be considered as appropriate for bargaining at Fairfax Hospital. The result will be an unnecessary fragmentation of employees within the Hospital with registered nurses governed by different work rules than those applied to other professionals within the Hospital. The Hospital will be required to administer different rules, wages and benefits for professionals working side by side. Union stewards with divided loyalties will be forced to police the assignment of work to ensure that their particular union preserves its share of the wages and hours needed to deliver health care at the Hospital. Should different unions organize separate groups

of employees at Fairfax Hospital along the lines suggested by the Final Rule, the contracts dealing with all such relationships between the Hospital and the unions will likely expire at different times. Negotiations will also occur at different intervals. The Fairfax Hospital System's goal of coordinated delivery of health care will likely be thwarted by internal disputes between unions. Delivery of health care to Fairfax Hospital's patients will not be as efficient and may result in unnecessary harm to these patients.

Application of the Rule to the Fairfax Hospital System could ultimately result in 32 different units within the System's four hospitals. The result will be a proliferation of units which can be avoided now by a decision by this Court. Even assuming the Court resolves the question of the legitimacy of the Board's Rule in a manner adverse to the American Hospital Association's position, Fairfax Hospital System can avoid potential legal costs in the Fourth Circuit (and the disruption of labor relations such an appeal might cause) and plan for the segmentation that could occur in its work force.

I. THE SEVENTH CIRCUIT'S DECISION IS IN CONFLICT WITH APPLICABLE LAW IN THE FOURTH CIRCUIT

The Fairfax Hospital System, located as it is within Northern Virginia, must regulate its labor relations policies in accordance with the National Labor Relations Act as interpreted by the National Labor Relations Board *and* as enforced by the Fourth Circuit. Although the Seventh Circuit's decision in this case would allow the Board to apply its Final Rule to petitions for representation in health care institutions, Fairfax Hospital is entitled to challenge bargaining unit determinations in the Fourth Circuit if it believes the Board's decisions are not consistent with applicable law.

The Fourth Circuit has always required a case-by-case determination as to the appropriate bargaining unit in any particular facility. Additionally, the Fourth Circuit requires each unit determination to reflect the congressional admonition in the legislative history of the Health Care Amendments Act of 1974 that "due consideration should be given by the Board to preventing proliferation of bargaining units in the health care industry". In *NLRB v. Frederick Memorial Hospital*,

the NLRB sought enforcement of an order finding a unit composed of registered nurses to be appropriate at Frederick Memorial Hospital. The Court of Appeals rejected the Board's findings because the NLRB did not give due consideration to the issue of proliferation of bargaining units at the Hospital. 691 F.2d at 194.

The Board's decision, *Frederick Memorial Hospital, Inc.*, 254 NLRB 36 (1981), upheld the Regional Director's determination that the registered nurses at Frederick Memorial Hospital possessed a sufficient community of interest, separate and apart from all other professionals, to justify their own unit for bargaining purposes. Finding differences in licensure and training requirements, vacation pay, overtime payments, organizational structure, and other working conditions between the registered nurses and the other professionals, the Regional Director concluded that a separate unit of nurses was appropriate. In particular, the Board emphasized the fact that the vast majority of the registered nurses at Frederick Memorial Hospital were administratively separated into a nursing division which promulgated its own work policies and procedures. The registered nurses reported to different supervisors than the other professionals at the hospital and they also lacked extensive contact with other professionals. 254 NLRB at 38.

The NLRB thus rejected the hospital's attempt to include thirty-six other health care professionals into the unit of 158 registered nurses. The NLRB also rejected, however, language in the Regional Director's decision which suggested that the RN unit sought by the union was "*per se* appropriate". The Board stated:

> We do not rely on, however, any comments in the Regional Director's decision that may be taken as a conclusion that the registered nurse unit sought here was *per se* appropriate. Our conclusion on the appropriateness of the unit is based on *the particular circumstances involved here*.

Id. at 39, n.12 (emphasis added).

As reported, the Board's decision in *Frederick Memorial Hospital* illustrates that the Regional Director made a detailed analysis of the working conditions of the registered nurses and the other allied

professionals at the hospital before concluding that the RN unit was appropriate. The Board said:

> Here, while the Regional Director issued his decision in the underlying representation case without the benefit of *Newton-Wellesley*, he did receive and consider all the evidence presented by the parties concerning the alleged appropriateness of the petitioned-for unit of registered nurses. Here, unlike the situation in *St. Francis Hospital of Linwood*, all parties at the hearing in the representation case encouraged the taking of testimony concerning the appropriateness of a registered nurse unit. With all evidence having been adduced that the parties deemed relevant, the Regional Director in his decision then concluded that the requested unit of registered nurses here was an appropriate unit for collective bargaining.

Id. at 37.

The *Frederick Memorial Hospital* decision demonstrates that both the Regional Director and the Board analyzed the working conditions within the hospital in detail before concluding that the unit of registered nurses was appropriate. The Court of Appeals for the Fourth Circuit approved the detailed analysis undertaken by the Board in the underlying case. The court refused to enforce the decision, however, because neither the Regional Director nor the Board addressed the question of proliferation when considering the appropriateness of the RN unit. The court said:

> The Board may not depend solely on the traditional community of interest test when making a unit determination for health care institution employees. As other courts have held, the Board must give due consideration to the congressional admonition against proliferation. Furthermore, a Board decision must clearly explain "the manner in which its unit determination... implement[s] or reflect[s] that admonition...."

* * *

> A reviewing court, no less than the Board, is bound to give effect to the congressional admonition against proliferation. The court cannot in the first instance adjudicate whether certification of a unit is consistent with congressional intent. Nor can the Court adequately review the Board's decision and order unless the Board clearly discloses why certification of the unit comports with the necessity of preventing proliferation.

691 F.2d at 194. (citations omitted).

The Fourth Circuit recognized in its *Frederick Memorial Hospital* decision that a unit of registered nurses might not be appropriate in other hospitals. *Id.* In this respect, the Fourth Circuit's opinion is clearly at odds with the Seventh Circuit's decision sanctioning the Board's new *per se* approach for bargaining unit determinations. Similarly, the Fourth Circuit requires consideration of the congressional admonition against proliferation in each unit determination and a specific explanation of why certification of a particular unit *in each case* serves the Congressional admonition against unit proliferation. This holding of the Fourth Circuit is again clearly at odds with the Seventh Circuit's decision. *See* Pet. App. at 12a. ("[The admonition] is cautionary rather than directive.").

The rights of Fairfax Hospital System with respect to arguing the appropriateness of any bargaining unit within the Fairfax Hospital System is thus governed by the Fourth Circuit's decision in *Frederick Memorial Hospital*. The Board's Final Rule would preclude the kind of specific case-by-case analysis required by the Fourth Circuit in *Frederick Memorial Hospital*. Fairfax Hospital would not be bound by the Seventh Circuit's decision, however, but would be entitled to challenge in the court of appeals the appropriateness of any unit which is determined to be *per se* appropriate pursuant to the Board's Final Rule. A decision now by the Court resolving the conflict between the courts of appeals would, therefore, prevent the needless waste of time and resources of the Fairfax Hospital System, the DCNA, the Board and the Fourth Circuit.

II. THE BOARD'S RULE IS ARBITRARY AND CAPRICIOUS INSOFAR AS IT IGNORES THE PARTICULAR CONDITIONS OF EMPLOYMENT WITHIN FAIRFAX HOSPITAL AND THE DIFFERING SIZE, LOCATIONS AND OPERATIONS OF OTHER HOSPITALS WITHIN THE FAIRFAX HOSPITAL SYSTEM.

The Board's Final Rule mandates that the petition for an all RN unit at Fairfax Hospital be approved by the Regional Director for the NLRB without a specific analysis of employment conditions at Fairfax Hospital. If the union is successful in convincing registered nurses to vote for representation, Fairfax Hospital will be faced with the dilemma of having to negotiate a collective bargaining agreement which will govern the working conditions of only a portion of the integrated team of health care professionals providing patient care services at Fairfax Hospital. The result will be a fragmentation of the work force, with some professionals working under work rules governed by the collective bargaining agreement, while others working under the policies of the Fairfax Hospital System.

Fairfax Hospital has instituted a team approach to medical care within the Hospital and it has integrated the services of its professionals in implementing this approach. The Board's Final Rule would set registered nurses apart in an artificially created labor relations unit that will undoubtedly impede the coordinated delivery of health care envisioned by the Fairfax Hospital organization. Work rules developed out of the negotiations between the union and the Hospital may also conflict with the integrated team approach utilized by the Hospital at this time. Ultimately, if the Board's *per se* Rule is allowed to stand, the Hospital may have to deal with eight separate units of employees, all working under separate contracts with separate work rules, with separate salary structures, with separate benefit plans, all of which will be monitored and patrolled by cadres of union stewards. The Fairfax Hospital System believes that such a proliferation of units is an unnecessary consequence of the union organizing which is now occurring at Fairfax Hospital. The Fairfax Hospital System believes that its integrated organizational structure merits consideration of other possible bargaining units by which the desire for union representation, such as it may exist, can be accommodated in a coordinated and reasonable manner.

The Fairfax Hospital System urges the Court to consider whether the Board's Final Rule gives the System any realistic opportunity to demonstrate that its coordinated approach to health care delivery is better served by bargaining units other than the eight rigid groupings set forth in the Final Rule. For example, registered nurses at Fairfax Hospital are not set apart into a separate nursing division as was the case in the *Frederick Memorial Hospital* decision. Nurses are assigned to various specialty areas and they report to assistant administrators who also supervise the work of other allied professionals at the Hospital. Nurses also work along side other professionals in departments where the immediate supervisor is not a registered nurse. For example, the director of cardiovascular services supervises nurses and cardiovascular technologists. The radiation therapy director supervises nurses and radiation therapy technicians. The radiology director supervises both nurses and x-ray technicians. Laboratory directors supervise nurses and medical technologists.

The Hospital also has mechanisms in effect for increasing the integration between professionals and the delivery of coordinated health care services to its patients. For example, delivery of emergency care is very much a team effort with nurses, physicians and x-ray technicians treating the same patient. Pharmacists are assigned to nursing units in various satellite pharmacies to increase coordination and delivery time of medicine to the Hospital's patients. Nurses work with pharmacists and dieticians on nutrition support teams to assist the recovery of patients. Finally, discharge planning is also a team effort with social workers, physicians and nurses working together prior to the actual release of patients.

It is easy to visualize how Fairfax Hospital's team approach to patient care will be disrupted by the *per se* application of the Board's Final Rule. The Final Rule forces professionals working on the same hospital team into separate units for bargaining. The Rule also increases the likelihood that these professionals will be represented by different unions. The Hospital's team concept could be threatened by jurisdictional disputes over which work will be performed by which union. Conflicting work rules regarding hours of work, overtime and

other working conditions are likely to destroy the cohesion of the Hospital's integrated approach to patient care. Ultimately, patient care may be impaired by the conflict between union members, thereby creating the very situation which Congress attempted to prevent in drafting the Health Care Amendments Act.

The Board's Final Rule ignores the special circumstances of employment at Fairfax Hospital and threatens to disrupt the Hospital's team concept for delivering quality health care at the institution. The Board's "extraordinary circumstances" exception will not provide the opportunity Fairfax Hospital needs to demonstrate to the NLRB that bargaining units other than those set forth in the Rule may better suit the special needs of the Hospital.

The dilemma for the Fairfax Hospital System is likewise ominous if the Board's *per se* rule is allowed to have application to all of the hospitals within the System without an individual analysis of the merits of any particular bargaining unit at each hospital. The Board's Final Rule presents the potential for 32 different bargaining units within the Fairfax Hospital System. This is true even though the hospitals vary in size from 4,500 employees at Fairfax Hospital to only 420 employees at Jefferson Hospital. This is true even though the delivery of patient care services varies from hospital to hospital and the range of services offered obviously is much more complex and varied at Fairfax Hospital than can be achieved at Jefferson Hospital. Even assuming an all RN unit was appropriate at Fairfax Hospital, a similar fragmentation of the professional work force at Jefferson Hospital would not necessarily be appropriate. The Board's Rule mandates such fragmentation, nevertheless.

The Fairfax Hospital System applies the same benefit plans, personnel policies and salary scales to all employees in the System. The cost to the Fairfax Hospital System of restructuring its benefit plans, its salary scales, and its personnel policies to accommodate 32 different bargaining units would be enormous. The Board's Final Rule is arbitrary and capricious in that it fails to recognize the differences between the various hospitals within the Fairfax Hospital System and precludes any particular hospital from arguing the reasonableness of a lesser number of bargaining units than that which is mandated by the Board's Final Rule. The potential problems and disruption which

would likely be experienced within the Fairfax Hospital System will reoccur within other hospital systems unless the Court overturns the Seventh Circuit's decision and reinstates the injunction ordered by the district court. A decision on the legitimacy of the Board's Rule is needed now before costs and disruption begin escalating for the Fairfax Hospital System and other health care institutions in this country.

CONCLUSION

For all the foregoing reasons and for the reasons stated in the petition of the American Hospital Association, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

By:_____

JOHN G. KRUCHKO*
PAUL M. LUSKY
KRUCHKO & FRIES
Suite 202
7929 Westpark Drive
McLean, Virginia 22102
(703) 734-0554

Attorneys For Amicus Curiae
The Fairfax Hospital System

*Counsel of Record

APPENDIX

July 12, 1990

BY FEDERAL EXPRESS

Paul M. Lusky
Kruchko & Fries
7929 Westpark Drive, Suite 202
McLean, Virginia 22102

Re: *American Hospital Association* v. *NLRB*

Dear Paul:

The American Hospital Association consents to your filing a brief *amicus curiae* in this matter on behalf of the Fairfax Hospitals.

Sincerely,

James Holzhauer

JDH:cml
Enclosures

U.S. Department of Justice
Office of the Solicitor General

July 27, 1990

Paul M. Lusky, Esq.
Kruchko & Fries
606 Towson Towers
28 West Allegheny Avenue
Baltimore, Maryland 21204

Re: *American Hospital Association* v. *N.L.R.B., et al.*,
No. 90-97

Dear Mr. Lusky:

In response to your letter of July 17, 1990, I hereby consent to the filing of an *amicus curiae* brief on behalf of the Fairfax Hospital System.

Sincerely,

_____
Kenneth W. Starr
Solicitor General

July 18, 1990

Paul M. Lusky, Esq.
Kruchko & Fries
606 Towson Towers
28 West Allegheny Avenue
Baltimore, Maryland 21204

Re: *American Hospital Association* v. *N.L.R.B., et al.*,
United States Supreme Court (Oct. Term, 1990)

Dear Mr. Lusky:

The American Nurses' Association consents to your filing of an *amicus curiae* brief in the above-referenced matter on behalf of the Fairfax Hospital System.

Sincerely,

_____
George Kaufmann

July 30, 1990

Paul M. Lusky, Esq.
Kruchko & Fries
606 Towson Towers
28 West Allegheny Avenue
Baltimore, Maryland 21204

Re: *American Hospital Association* v. *N.L.R.B., et al.*,
(United States Supreme Court, October Term,
1990)

Dear Mr. Lusky:

The AFL-CIO, Building and Construction Trades Department consents to your filing of an *amicus curiae* brief in the above-referenced matter on behalf of the Fairfax Hospital System.

Sincerely,

David Silberman